

LAKE OZARK-OSAGE BEACH JOINT )  
SEWER BOARD, LARRY STOCKMAN, )  
VICKY STOCKMAN, ) Case No. 14-ML-CC00010  
)  
Petitioners, )  
v. )  
)  
MISSOURI DEPARTMENT OF NATURAL )  
RESOURCES, LAND RECLAMATION )  
COMMISSION, and )  
MAGRUDER LIMESTONE CO., INC., )  
)  
Respondents. )

COMES NOW Respondent Magruder Limestone Co., Inc. (“Magruder”), and for its Answer to Petitioners’ Petition for Review, responds as follows:

1. Magruder admits that the Lake Ozark/Osage Beach Joint Sewer Board (“Sewer Board”) is a public utility board. Magruder is without sufficient knowledge or information to form a belief with regard to the remaining allegations contained within Paragraph 1 of Petitioners’ Petition, and accordingly denies the same.

2. Magruder admits Larry and Vicki Stockman (“the Stockmans”) are individuals. Magruder is without sufficient knowledge or information to form a belief with regard to the remaining allegations contained within Paragraph 2 of Petitioners’ Petition, and accordingly denies the same.

3. Magruder admits that the Missouri Department of Natural Resources is a state agency. Magruder is without sufficient knowledge or information to form a belief with regard to the remaining factual allegations and legal conclusions contained in Paragraph 3 of Petitioners' Petition, and accordingly denies the same.

4. Magruder admits that the Missouri Land Reclamation Commission ("LRC") is an environmental commission. Magruder is without sufficient knowledge or information to form a belief with regard to the remaining factual allegations and legal conclusions contained within Paragraph 4 of Petitioners' Petition, and accordingly denies the same.

5. Magruder admits the factual allegations contained in Paragraph 5 of Petitioners' Petition.

6. The allegations contained in Paragraph 6 of Petitioners' Petition are legal conclusions that do not require an answer. To the extent the allegations contained in Paragraph 6 of Petitioners' Petition are construed as factual, Magruder is without sufficient knowledge or information to form a belief with regard to those factual allegations, and accordingly denies the same.

7. The allegations contained in Paragraph 7 of Petitioners' Petition are legal conclusions that do not require an answer. To the extent the allegations contained in Paragraph 7 of Petitioners' Petition are construed as factual, Magruder is without sufficient knowledge or information to form a belief with regard to those factual allegations, and accordingly denies the same.

#### **ALLEGATIONS IN SUPPORT OF PETITION**

8. Magruder admits it initially submitted a Permit Expansion Application to the LRC to engage in surface mining on 205 acres in Miller County, Missouri, on or about April 18, 2007. Answering further, Magruder supplemented its Permit Expansion Application on or about February 5, 2008. Magruder denies that the Application attached to Petitioners' Petition for Review as Exhibit 1 represents the complete Application submitted by Magruder to the LRC.

9. Magruder admits that on or around July 9, 2007, the Sewer Board filed a request for a hearing before the LRC in which it challenged the issuance of Magruder's Permit.

Magruder denies each and every remaining factual allegation and legal conclusion contained within Paragraph 9 of Petitioners' Petition.

10. Magruder admits the factual allegations contained within Paragraph 10 of Petitioners' Petition.

11. Magruder admits that on or about September 26, 2007, a formal public meeting was conducted by the LRC, whereupon Petitioners were granted standing to proceed to a formal public hearing before the LRC. Magruder denies the remaining factual allegations and legal conclusions contained within Paragraph 11 of Petitioners' Petition.

12. Magruder admits that formal hearings were conducted on March 24, April 28, 29 & 30, May 23, and June 4 & 6, 2008, before the duly appointed hearing officer, Mr. W.B. Tichenor. Magruder denies each and every remaining factual allegation and legal conclusion contained within Paragraph 12 of Petitioners' Petition.

13. Magruder admits that on July 24, 2008, the LRC issued its Final Order approving Magruder's Permit Expansion Application with certain conditions. Magruder states that the LRC's July 24, 2008 Final Order speaks for itself, and denies each and every allegation contained within Paragraph 13 of Petitioners' Petition as attempting to improperly characterize the LRC's July 24, 2008 Final Order.

14. Magruder states that Petitioners' August 15, 2008 Petition for Review and Application for Expedited Review, filed in Miller Country Circuit Court Case No. 08ML-CC00106, speaks for itself, and denies each and every factual allegation and legal conclusion contained within Paragraph 14 of Petitioners' Petition that is inconsistent with Petitioners' August 15, 2008 Petition for Review and Application for Expedited Review.

15. Magruder denies each and every remaining factual allegation contained within Paragraph 15 of Petitioners' Petition.

16. Magruder admits that it conducted blasting at the proposed quarry site on September 9, 2008. Magruder denies each and every factual allegation contained within Paragraph 16 of Petitioners' Petition.

17. Magruder states that the Court's September 15, 2008 Order in Miller County Case No. 08ML-CC00106 speaks for itself, and denies each and every factual allegation and legal conclusion contained within Paragraph 17 of Petitioners' Petition as attempting to improperly characterize the Court's September 15, 2008 Order.

18. Magruder admits it conducted blasting at the proposed quarry site on September 19, 2008. Magruder denies each and every other factual allegation and legal conclusion contained within Paragraph 18 of Petitioners' Petition.

19. Magruder states that the Court's September 25, 2008 Order in Miller County Case No. 08ML-CC00106 speaks for itself, and denies each and every factual allegation and legal conclusion contained within Paragraph 19 of Petitioners' Petition as attempting to improperly characterize the Court's September 25, 2008 Order.

20. Magruder states that the Court's April 3, 2009 Order in Miller County Case No. 08ML-CC00106 speaks for itself, and denies each and every factual allegation and legal conclusion contained within Paragraph 20 of Petitioners' Petition as attempting to improperly characterize the Court's April 3, 2009 Order.

21. Magruder states that the Missouri Court of Appeals, Western District's August 31, 2010 Order in *Lake Ozark/Osage Beach Joint Sewer Board v. Missouri Dept. of Natural Resources et al.*, 326 S.W.3d 38 (Mo. App. 2010) speaks for itself, and denies each and every

factual allegation and legal conclusion contained within Paragraph 21 of Petitioners' Petition that is inconsistent with the Missouri Court of Appeals, Western District's August 31, 2010 Order.

22. Magruder admits that the matter was transferred to the Administrative Hearing Commission for a new hearing, and that Commissioner Karen A. Winn was assigned to preside. Magruder is without sufficient knowledge or information to form a belief with regard to the remaining allegations contained within Paragraph 22 of Petitioners' Petition, and accordingly denies the same.

23. Magruder admits the factual allegations contained in Paragraph 23 of Petitioners' Petition.

24. Magruder admits that Commissioner Winn filed her Recommended Decision on June 27, 2013. Magruder states that Commissioner Winn's Recommended Decision speaks for itself, and denies each and every remaining factual allegation and legal conclusion contained within Paragraph 24 of Petitioners' Petition as attempting to improperly characterize Commissioner Winn's Recommended Decision.

25. Magruder admits that Commissioner Winn's Recommended Decision found that Magruder met its burden of persuasion by establishing that the impact of activities associated with the Permit would not unduly impair the health, safety or livelihood of Petitioners. Magruder states that Commissioner Winn's Recommended Decision speaks for itself, and denies each and every remaining factual allegation and legal conclusion contained within Paragraph 25 of Petitioners' Petition as attempting to improperly characterize Commissioner Winn's Recommended Decision.

26. Magruder admits that Commissioner Winn recommended approval of Magruder's Permit Expansion Application, and recommended eight (8) Permit conditions. Magruder states

that Commissioner Winn's Recommended Decision speaks for itself, and denies each and every remaining factual allegation and legal conclusion contained within Paragraph 26 of Petitioners' Petition as attempting to improperly characterize Commissioner Winn's Recommended Decision.

27. Magruder denies each and every factual allegation and legal conclusion contained within Paragraph 27 of Petitioners' Petition.

28. Magruder denies each and every factual allegation and legal conclusion contained within Paragraph 28 of Petitioners' Petition.

29. Magruder is without sufficient knowledge or information to form a belief with regard to the allegations contained within Paragraph 29 of Petitioners' Petition, and accordingly denies the same.

30. Magruder is without sufficient knowledge or information to form a belief with regard to the allegations contained within Paragraph 30 of Petitioners' Petition, and accordingly denies the same.

31. Magruder is without sufficient knowledge or information to form a belief with regard to the allegations contained within Paragraph 31 of Petitioners' Petition, and accordingly denies the same.

32. Magruder is without sufficient knowledge or information to form a belief with regard to the allegations contained within Paragraph 32 of Petitioners' Petition, and accordingly denies the same.

33. Magruder admits that on September 26, 2013, the LRC met in open session to discuss Magruder's Permit Expansion Application. Magruder is without sufficient knowledge or information to form a belief with regard to the remaining allegations and accordingly denies the

same. Magruder denies all remaining factual allegations contained within Paragraph 33 of Petitioners' Petition.

34. Magruder admits that after comments from all parties, the LRC voted to approve Magruder's Permit Expansion Application with the five (5) conditions set forth in paragraph 34. Magruder denies all remaining factual allegations and legal conclusions contained within Paragraph 34 of Petitioners' Petition.

35. Magruder denies each and every allegation contained within Paragraph 35 of Petitioners' Petition.

36. Magruder denies each and every factual allegation and legal conclusion contained within Paragraph 36 of Petitioners' Petition.

37. Magruder denies each and every factual allegation and legal conclusion contained within Paragraph 37 of Petitioners' Petition.

38. Magruder admits that on September 26, 2013, the LRC voted unanimously to approve Magruder's Permit Expansion subject five (5) conditions set-out by the LRC. Magruder denies each and every remaining allegation contained in Paragraph 38 of Petitioners' Petition.

39. Magruder states that LRC Permit No. 0086 A1, issued to Magruder on October 2, 2013 and authorizing it to operate a limestone quarry on the proposed quarry site subject to five (5) conditions, speaks for itself, and denies each and every allegation contained in Paragraph 39 of Petitioners' Petition that is inconsistent with LRC Permit No. 0086 A1.

40. Magruder admits the allegations contained within Paragraph 40 of Petitioners' Petition.

41. Magruder admits the allegations contained within Paragraph 41 of Petitioners' Petition.

42. Magruder denies each and every factual allegation and legal conclusion contained within Paragraph 42 of Petitioners' Petition.

43. Magruder denies each and every factual allegation and legal conclusion contained within Paragraph 43 of Petitioners' Petition.

44. Magruder denies each and every factual allegation and legal conclusion contained within Paragraph 44 of Petitioners' Petition.

45. Magruder is without sufficient knowledge or information to form a belief with regard to the allegations contained within Paragraph 45 of Petitioners' Petition, and accordingly denies the same.

46. Magruder denies each and every factual allegation and legal conclusion contained within Paragraph 46 of Petitioners' Petition, and each subpart thereof.

47. Magruder denies each and every factual allegation and legal conclusion contained within Paragraph 47 of Petitioners' Petition.

#### **AFFIRMATIVE DEFENSES**

1. Magruder denies any of Petitioners' allegations not expressly admitted herein.

2. Petitioners' Petition fails to state a valid basis for setting aside or reversing the LRC's decision to grant Magruder's Permit Expansion Application.

3. Petitioners' Petition fails to state a valid basis for denying in full Magruder's Permit Expansion Application.

4. Petitioners cannot establish that they are entitled to an Order staying the LRC's decision granting Magruder's Permit Expansion Application pending judicial review. Moreover, Petitioners have agreed not to pursue a stay of the LRC's decision through agreement of counsel, except under certain circumstances, agreed to by counsel, which will be reflected in an agreed upon Order and Judgment.



5. Petitioners lack standing to assert any claim or argument on behalf of any person, entity or region who is not a party to this Petition for Review.

6. Magruder reserves the right to raise other defenses as they become known throughout the course of this proceeding litigation.

WHEREFORE, Magruder Limestone Co., Inc. prays for dismissal of Petitioners' Petition for Review, for an Order affirming the Land Reclamation Commission's decision granting Magruder's Permit, and for such other relief as this Court deems proper and just.

Respectfully submitted,

POLSINELLI PC

By: 

S. Jay Dobbs (#40859)  
100 S. Fourth Street, Suite 1000  
St. Louis, MO 63102  
Tel. 314.889.8000  
Fax 314.231.1776  
jdobbs@polsinelli.com

Adam R. Troutwine (#58787)  
900 West 48<sup>th</sup> Place, Suite 900  
Kansas City, Missouri 64112  
Tel. 816.753.1000  
Fax 816.753.1536  
atroutwine@polsinelli.com

*ATTORNEYS FOR RESPONDENT  
MAGRUDER LIMESTONE CO., INC.*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served via email and U.S. Mail on the 13<sup>th</sup> day of March, 2014, upon:

Steven Mauer, Esq.  
Zerger & Mauer  
1100 Main Street, Suite 2100  
Kansas City, MO 64105

And by U.S. Mail on the 13<sup>th</sup> day of March, 2014, upon:

Timothy P. Duggan, Esq.  
Assistant Attorney General  
P.O. Box 899  
Jefferson City, MO 65102

Larry & Vicky Stockman  
Riverview RV Park & Sales  
398 Wood River Road  
Lake Ozark, MO 65049



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*ATTORNEY FOR RESPONDENT  
MAGRUDER LIMESTONE CO., INC.*